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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,673	09/30/2003	Eric Daniel Andre Jeandemange	2003.1 - Jeansdemange.Eri	5001

7590 10/15/2004  
Randal D. Homburg  
P.O. Box 10470  
Midwest City, OK 73140-1470

EXAMINER

SZUMNY, JONATHON A

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 10/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/674,673

Applicant(s)

ANDRE JEANDEMANGE ET AL

Examiner

Jon A Szumny

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) 3-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/30/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Art Unit: 3632

This is the first office action for application number 10/674,673, CD Stand, filed on September 30, 2003.

### ***Election/Restrictions***

This application contains claims directed to the following patentably distinct species of the claimed invention:

Species 1: The stand of figures 1-2;

Species 2: The stand of figures 3-4;

Species 3: The stand of figures 5-6;

Species 4: The stand of figures 7-11

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims

Art Unit: 3632

are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Randal Homburg on October 6, 2004 a provisional election was made without traverse to prosecute the invention of Species 1, claims 1-2. Affirmation of this election must be made by applicant in replying to this Office action. Claims 3-7 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Information Disclosure Statement***

Receipt is acknowledged of Form PTO-1449, Information Disclosure Statement, which has been reviewed by the Examiner.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter that the applicant regards as his invention.

Claims 1 and 2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1 and 2, it is not clear if the applicant is claiming the subcombination of a stand *for* storing... CDs, or the combination of a stand *and* CDs. The preamble states the former (note the clause "for storing"), but then the combination is claimed later on in the claim ("...a lower flange slightly larger than said central holes of the stack of CDs, supporting said stack of CDs at an angle"). The applicant must make it clear whether the subcombination or combination is claimed as the invention. For instance, stating --...a lower flange *adapted to be* slightly larger...-- and --*adapted to support* said stack...-- would claim the subcombination, and the Examiner will assume this is the invention.

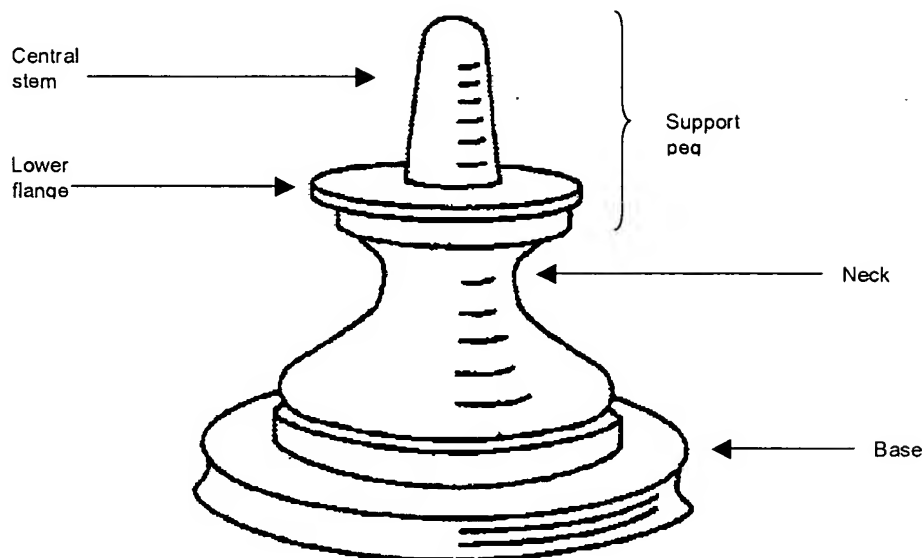
### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent number D494,381 to Ruscitto.

**FIG. 1**

Ruscitto '381 teaches a stand (above) comprising a weighted base (above, it inherently has some weight), at least one elongated neck (above), and at least one flanged support peg (above) having a central stem (above) and a lower flange (above); wherein the base, neck and flanged support peg are an integrated singular stand with the base substantially larger than the neck, wherein the support peg has a smooth tapered central stem.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3632

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ruscitto '381 in view of U.S. Patent number 5,341,942 to James, Jr.

Ruscitto '381 teaches the previous invention wherein the base, neck and peg are an integrated singular structure, but fails to specifically teach them to be *cast*.

Nevertheless, James, Jr. '942 divulges a stand (figure 1) for holding CD-like objects wherein the stand is constructed from a single integral piece of material that is cast (column 2, lines 63-67). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the base, neck and base as a single integrated structure *via casting* as in James, Jr. '942 since it is well known in the art that doing so is common process.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Suse '287, Edmondson '641, Vesco '578, Cooper '445, Seltzer '166, Wells '041, Iglesias '230, Scanlan '418, Powell et al. '906 teach various stands including bases, necks and support pegs.

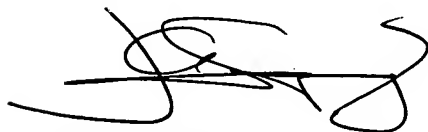
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon A Szumny whose telephone number is (703) 306-3403. The examiner can normally be reached on Monday-Friday 8-4.

Art Unit: 3632

The fax phone number for the organization where this application and proceeding are assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is

(703) 308-1113.

A handwritten signature in black ink, appearing to read 'Jon Szumny', with a stylized flourish at the end.

Jon Szumny  
Patent Examiner  
Technology Center 3600  
Art Unit 3632  
October 8, 2004